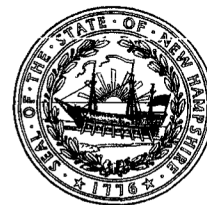




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

May 4, 2005

Ross Express, Inc.
Attn: Steven Brown
PO Box 8908
Penacook, NH 03303

Re: Docket No. AF 04-105 Motion to Accept Settlement Agreement

Dear Mr. Brown:

Enclosed for your records is a copy of the Motion to Accept Settlement Agreement in the above-captioned matter executed by Anthony P. Giunta, P.G., Director of the Waste Management Division, and accepted by Commissioner Michael P. Nolin on May 4, 2005.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Delaney,
Legal Assistant

cc: Anthony P. Giunta, PG., Director, Waste Management Division
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Thomas Beaulieu, DES WMD
Tammy Calligandes, DES WMD

Ross Express, Inc.
Attn: Steven Brown
P.O. Box 8908
Penacook, NH 03301-8908

Re: 195 Main Street, Boscawen, NH 03303
UST ID # 0-112769

**ADMINISTRATIVE FINE
No. AF 04-105**

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Ross Express, Inc. parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Ross Express, Inc., ("Ross") is the registered facility owner of one underground storage tank ("UST") system at the Ross facility ("the Facility"), further identified as UST # 0-112769, located on real property at 195 Main Street, Boscawen, NH ("the Property").
3. On December 9, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-105 ("the Notice") to Ross seeking fines totaling \$2,700 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. Specifically, the Notice cited Ross for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a), the Division sought a fine of \$500.
5. The Notice further cited Ross for violating Env-Wm 1401.25(d) by failing to properly install and maintain overfill protection equipment. Pursuant to Env-C 607.05(j), the Division sought a fine of \$200.
6. The Notice further cited Ross for violating Env-Wm 1401.30(a) by failing to conduct release detection for the piping system. Pursuant to Env-C 607.03(j), the Division sought a fine of \$1,000.
7. The Notice further cited Ross for violating Env-Wm 1401.33 by failing to install corrosion protection for piping under the dispensers. Pursuant to Env-C 607.003(f), the Division sought a fine of \$1,000.

8. In order to settle this matter, the Division and Ross have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

9. Of the proposed fine, in the amount of \$2,700, 20% or \$540 shall be suspended due to Ross's history of compliance at this facility. An additional 20% or \$540 shall be suspended due to Ross's good faith effort to return this facility to compliance. An additional 20% or \$540 shall be suspended due to consistent cooperation in providing information to DES and correcting the violations.

10. The suspended portion of the proposed fine, in the amount of \$1,620 is contingent upon Ross maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this document. If Ross fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$1,620 shall become due and payable immediately. If Ross maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

11. Ross agrees to pay the remaining \$1,080 upon execution of this agreement by Ross.

12. Payment under Paragraph #11 and any payment that becomes due pursuant to Paragraph #10 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

13. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

14. By executing this Agreement, Ross waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

15. The effective date of this Agreement will be the date on which it is signed by an authorized representative of Ross, the Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

16. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Date

4/14/05

Respectfully submitted,
Ross Express, Inc.

COPY
Steven Brown Pres.

By: Steven Brown
Duly Authorized

Date

4/22/05

DES Waste Management Division

COPY
Anthony P. Giunta

Anthony P. Giunta, P.G., Director

This Motion to Accept Settlement agreement is granted this 4th day of MAY, 2005.

COPY
Michael P. Noon
Michael P. Noon, Commissioner
Department of Environmental Services